HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No. : 2044 of 2007.
Reserved on: 6.12.2007.
Decided on: 17.12.2007.

Narinder Singh ..... Petitioner.

Versus

The Financial Commissioner (Appeals) and others .....Respondents.

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.
The Hon'ble Mr.Justice V.K. Ahuja, Judge.

Whether approved for reporting? Yes.

For the petitioner: Mr.Subhash Sharma, Advocate.

For respondent No.1 & 2: Mr.M.S. Chandel, Advocate General, with Mr.R.M. Bisht, Deputy Advocate General.

Per V.K. Ahuja, J:

This is a petition filed by the petitioner under Articles 226/227 of the Constitution of India challenging the order passed by Financial Commissioner (Appeals) on 20.11.2007.

Briefly stated the facts of the case are that the respondents Ram Swaroop etc. were tenants under the petitioner Narinder Singh in respect of land measuring 68-10 bighas in Village Nawan Graon. The petitioner had obtained an order for realization of arrears of rent from the competent authority against

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Whether reporters of local newspapers may be allowed to see the judgment? Yes.

respondents No.3 to 5 to the tune of Rs.4178.90 inclusive of costs and in execution, the land belonging to respondents No.3 to 5 was also auctioned which auction was also confirmed. The respondents challenged the said auction and the orders of confirmation. In a writ petition No.224 of 1981 filed by the respondents against the petitioner and others, a compromise was effected in between the parties and the writ petition was disposed of by learned Single Judge of this Court on June 11, 1987. The relevant portion of the order passed in this writ petition reads as under:

> *"3. The parties have now agreed that this auction sale be set aside and the aforesaid orders be set aside and the respondent Narinder Singh has, in satisfaction of all his claims against the petitioners, received an amount of Rs.59650/- by draft in the court today while he is also entitled to receive another sum of Rs.4100/- which the petitioners have deposited in the Court of the Assistant Collector, Ist Grade (GA), Solan. Said Narinder Singh has also agreed to confer proprietory rights in respect of the land mentioned in para-2 of the CMP above mentioned, upon the petitioners on payment of statutory compensation as would be assessed by the competent authority without any objection and has given up all past claims against the petitioners in this behalf and would withdraw all the litigation in respect thereof he has instituted against the petitioners.*
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> *4. In view of this the auction sale dated October 7, 1975, effected by the Tehsildar, Nalagarh is set aside and orders in connection with the auction sale, Annexure P-3, P-4, P-6, P-8, P-9 and P-11 are also set aside and in the result the auctioned land mentioned in para -3 of the application in CMP No.455 of 87 would revert to the ownership of the petitioners and mutations are liable to be attested in their favour in this behalf. So far as the land described in para-2 of the C.M.P. is concerned, the petitioners will be entitled to acquire proprietory rights in respect thereof only when they will pay the compensation in respect to this land to respondent No.3 Narinder Singh as would be assessed by the competent revenue authority but said Narinder Singh would not raise any other objection in this behalf."*

It appears that thereafter, the petitioner filed application before the LRO, Nalagarh for resumption of 3 acres of land under Section 4 of H.P. Tenancy

and Land Reforms Act from the respondents. The same was dismissed by the LRO on 6.2.1988 and appeals/revisions were also dismissed by the Collector, Commissioner and the Financial Commissioner (Appeals). A writ petition No.630 of 2001 was filed in this Court and the learned Single Judge decided the said writ petition and remanded the matter to the Financial Commissioner to decide the same afresh within a period of 3 months from the date of decision in the said writ petition and the orders passed by the various revenue authorities on 6.2.1988, 30.8.1988, 18.1.1989 and 16.12.2000 were quashed and set aside.

The learned Financial Commissioner, vide his impugned order, held that the petitioner's application for resumption was barred by limitation and, therefore, they were not entitled to resume any land from the respondents. The said order passed by the Financial Commissioner has been challenged by the petitioner by filing the present writ petition alleging that the petitioner was entitled to resume 3 acres of unirrigated land under the provisions of H.P. Tenancy and Land Reforms Act and the question of limitation was wrongly decided as against the petitioner and the petitioner was not given the compensation to which he was entitled and, therefore, he was entitled to resumption of land.

We have heard the learned counsel for the parties and have also gone through the record of the case.

The contention put forth by the learned counsel for the petitioner was that the limitation prescribed under the Act does not apply to the case of the petitioner since the matter was referred to the Financial Commissioner in pursuance of the compromise arrived at in between the parties and, therefore, the Financial Commissioner had wrongly dismissed the application of the petitioner being time barred.

The order was supported by the learned Advocate General on behalf of respondents No.1 and 2 being legal. It is not disputed that the compromise was effected in the Court in the previous petition pending before this Court and the terms of the compromise have also to be looked into as to what was agreed to in between the parties. A perusal of the application filed under Order 23 Rule 3 read with Section 151 CPC before this Court being CMP No.455 of 1987 in CWP No.224 of 1981 shows that the present petitioner i.e. Narinder Singh, who was respondent No.3 in that case, had agreed that the petitioners, namely, Ram Swaroop, Uttam Chand and Hakam shall be treated as owners of the land on their paying Rs.63,750/- in all to Narinder Singh, respondent No.3 in that case. It was also observed that a sum of Rs.4,100/- has already been deposited by the petitioners and balance amount of Rs.59,650/- will be paid to respondent No.3 or it shall be deposited in the Court. Respondent No.3 Narinder Singh in that case was also held entitled to withdraw the amount. It was also specified therein that respondent No.3 i.e. the present petitioner will get the mutation of ownership effected of the tenancy land mentioned in para 1 of the application measuring 68-10 bighas in favour of the petitioners Ram Swaroop etc. without any objection or protest on payment of the compensation prescribed under the H.P. Tenancy and Land Reforms Act. Thus, Ram Swaroop etc. were to become owners of the whole land measuring 68-10 bighas and the present petitioner was not to have any right in the said land and his interest was only confined to the amount already deposited or to be deposited and the compensation to be assessed under the H.P. Tenancy and Land Reforms Act. There was nothing in the compromise that in what eventuality respondent No.3 i.e. the present petitioner was to be entitled to apply for acquisition of the proprietary rights in the land in question. The said

compromise was given effect in the order passed by this Court on 11.6.1987 in CWP No.224 of 1981 in which also the statement of the present petitioner Narinder Singh as respondent No.3 in that case was recorded and he had clearly reproduced what was mentioned in the application mentioned above. He has clearly stated that he will have no objection in acquiring their proprietorship subject to payment of just compensation as will be assessed by the competent authority. The petitioner in this petition has contended through his counsel that since the compensation has not been paid to him, he is entitled to get the proprietary rights. Therefore, his application for acquisition of proprietary rights should have been allowed by the Financial Commissioner to which submission we are unable to agree.

The part of the amount had already been deposited, the rest was to be deposited and the third component of the amount of compensation was to be assessed by the competent authority over which the respondents had no control and it was to be payable to the petitioner as and when assessed by the competent authority and he could have only applied for the payment of the said compensation as and when determined by the competent authority. There was nothing in the order providing for any eventuality or contingencies when the petitioner was to be conferred the proprietary rights. However, the learned Single Judge, while directing the Financial Commissioner to decide the matter in three months, had also made reference to this compromise arrived in between the parties and had observed that the petitioner had only agreed to confer the proprietary rights upon the tenants. But these rights were to be conferred upon the tenants under the provisions of the Act by the competent authority and not by the landlord himself. No appeal has been filed against the said order passed by the learned Single Judge and, therefore, we are not making any comments in

regard to the findings recorded by the learned Single Judge, which were binding upon the parties and Financial Commissioner. But in case in interpreting the previous compromise effected in writ petition No.224 of 1981, some observations have been made by the learned Single Judge while interpreting the final order or the statement made by the present petitioner, which is not correct, the same can be ignored by this Court sitting in Division Bench. The said question does not arise and would have arisen in case the Financial Commissioner had decided the case also on merits in favour of the petitioner or as against him. But that question does not arise since the Financial Commissioner had come to the conclusion that the application was not filed for acquisition of proprietary rights by the petitioner within the time prescribed under the rules framed under the H.P. Tenancy and Land Reforms Act. The limitation has been prescribed under the provisions of H.P. Tenancy and Land Reforms Rules framed under the provisions of the Act to which reference has been made by the Financial Controller and accordingly he came to the conclusion that the present application was beyond time. It cannot be said that the petitioner could have filed the application within a period of 3 years from the date of cause of action since the cause of action, if any, had arisen to the petitioner only from the date the order was passed by the learned Single Judge directing the petitioner to apply for acquisition of proprietary rights, if any, and therefore, the limitation had to be construed within the provisions of the Act and the Rules framed thereunder. It is not the case of the petitioner that there is no such limitation or the limitation has been wrongly interpreted under the provisions of the Rules framed under the provisions of the Act. The Financial Commissioner was bound to abide by the order of the learned Single Judge and he had to decide the application for conferment of proprietary rights preferred by the petitioner wrongly or rightly

within the provisions of the Act and the Rules framed thereunder and his order, therefore, holding that the said application was time barred does not suffer from any illegality. In so far as this Court is concerned, we may reiterate again that in case the learned Single Judge had made wrong interpretation of the terms of the compromise, this Court, if necessary, can ignore the same but that question has not arisen since the application filed by the petitioner has been dismissed by the Financial Commissioner in accordance with law and the said order passed by the Financial Commissioner does not suffer from any illegality to be interfered with. Therefore, there is no merit in the writ petition filed by the petitioner which is dismissed accordingly. There is no order as to costs.

CMP No.3205 of 2007:

Infructuous.

(Deepak Gupta), J.

(V.K. Ahuja), J.

December 17, 2007. (TILAK)